

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Otter Tail
Corporation d/b/a Otter Tail Power Company
to Service Otter Tail Ag Enterprises

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDED ORDER**

The above matter came on for an evidentiary hearing before Administrative Law Judge Richard C. Luis on September 12 and 13, 2006 in the Federal Courthouse, 118 South Mill Street, Fergus Falls, Minnesota. The hearing record remained open after the hearing for submission of posthearing briefs. The hearing record in this matter closed on November 22, 2006.

R. Kristian Svingen, Attorney at Law, Svingen, Hagstrom, Karkela & Cline, 125 South Mill Street, Fergus Falls, Minnesota 56537, and Bruce Gerhardson, Associate General Counsel, 215 South Cascade Street, Fergus Falls, Minnesota 56537, appeared on behalf of Otter Tail Power Company (OTP).

Harold LeVander, Jr., Attorney at Law, Felhaber, Larson, Fenlon & Vogt, P.A., 444 Cedar Street, Suite 2100, Saint Paul, MN 55101-2136, appeared on behalf of Lake Region Electric Cooperative (LREC).

Stuart Mitchell, Rate Analyst, 121 Seventh Place East, Suite 350, Saint Paul, Minnesota, appeared on behalf of the Staff of the Minnesota Public Utilities Commission (Commission or PUC).

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission ("Commission") and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule that the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply (if any), and an original and 15 copies of each document should be filed with the Commission.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and one is held.

STATEMENT OF ISSUES

In this proceeding, the Commission must determine which utility should serve Otter Tail Ag Enterprises LLC, based on the following factors:

- Whether the customer and the load to be served in this matter meet the thresholds for application of Minn. Stat. § 216B.42.
- Whether OTP or LREC meets the electric service requirements of the load to be served.
- Whether OTP or LREC has an available, adequate power supply.
- Whether choosing a particular utility will result in the development or improvement of the electric system of the utility seeking to provide the electric service, including the economic factors relating thereto.
- The proximity of adequate facilities from which OTP or LREC will be providing electric service of the type required by Otter Tail Ag Enterprises LLC.
- The declared preference of the customer for OTP as the utility to provide the electric service.
- Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Jurisdictional-Procedural Background

1. On May 2, 2006, Otter Tail Power (OTP) filed a Petition with the Commission under Minn. Stat. § 216B.42, requesting authority to provide electric service to Otter Tail Ag Enterprises LLC (“OTAE”). OTAE is constructing an ethanol processing plant (the Plant) in Carlisle Township, outside of the municipal boundaries of the City of Fergus Falls, located on property in the service areas of both OTP and LREA.^[1]

2. On June 9, 2006, the Commission issued a Notice and Order for Hearing directing that a contested case hearing be convened to determine whether OTP or LREC should provide electricity to the Plant being developed by Otter Tail Ag.^[2]

Description of the Utilities' Service Areas

3. OTP is an investor-owned electric utility which serves 125,000 customers throughout Northwest Minnesota, Northeastern South Dakota, and Eastern North Dakota. OTP's annual sales are just below 3.9 billion kilowatt hours (kWh). OTP's main offices are located at Fergus Falls, Minnesota.^[3]

4. The City of Fergus Falls ("the City") is located along the Otter Tail River in Otter Tail County. The City is the county seat. Surrounding part of the City is Fergus Falls Township (Township). OTP's service area includes the municipal boundary of the City and narrow areas immediately adjacent to its boundaries to the northwest in the Township. To the south, OTP's service area includes larger areas on both sides of Interstate Highway 94, which passes along the southern and western boundaries of the City. Otter Tail's service area also includes a discrete area ("Otter Tail Area") approximately two miles from the northwest corner of the City's municipal boundary. The Otter Tail Area straddles Interstate Highway 94, and has several miles of rail line operated by the Otter Tail Valley Railroad Company intersecting its southwest corner.^[4]

5. OTP serves the existing customers in the Otter Tail Area through a 12.5 kV distribution line running to OTP's Edgetown substation.^[5] OTP does not have a substation in the Otter Tail Area. OTP is a member of the Midwest Independent Transmission System Operators, Inc. ("MISO"). Great River Energy ("GRE") is also a member of MISO.

6. Lake Region Electric Cooperative ("LREC") provides electricity to areas primarily in Wilkin, Becker, and Otter Tail Counties (including the area adjacent to OTP's service area near Fergus Falls). Over its entire service area, LREC serves approximately 25,000 customers, who are also members of the cooperative. Approximately 90% of LREC's customers are residential, and the remaining 10% are commercial.^[6] These customers purchase approximately 337 million kilowatt hours (kWh) of electricity annually. LREC is based in Pelican Rapids, approximately 21 miles north of Fergus Falls.

Otter Tail Ag Enterprises, LLC

7. The customer in this matter is Otter Tail Ag Enterprises, LLC ("OTAE"). OTAE was recently formed and is comprised of 887 members. OTAE has a total equity subscription of \$44.5 million.^[7] OTAE plans to build an ethanol processing plant (the Plant) which will require significant demand for electricity to support the Plant's operations.^[8]

8. The Plant is projected to produce between 50 and 55 million gallons of ethanol per year.^[9] This level of production will require an initial electrical load of 6.5 MW.^[10] The Plant is expected to operate on a 24 hour/7 day per week (24/7) schedule

for 360 days out of the year.^[11] Depending on the current market price of ethanol, a service outage lasting four hours could result in OTAE losing \$50,000 in gross revenue.^[12] Due to the anticipated 24/7 operating schedule, any such losses cannot be made up by increasing production.^[13]

Description of the Service Area

9. The Plant is located at the SW ¼, Section 20, Township 133, Range 43, Otter Tail County.^[14] The property on which the Plant is located is mostly in LREC's service area. A corner of the property, which is slated to hold ethanol storage tanks and to provide rail access, is located in the Otter Tail Area served by OTP.^[15]

10. As part of its infrastructure serving the area, LREC has a substation located several hundred feet from the Plant's location ("the LREC substation"). The LREC substation carries a load of 1 megawatt (MW), drawing electricity from a 115 kV transmission line owned by Great River Energy (GRE).^[16] LREC is a member distribution cooperative of GRE.^[17]

11. With both LREC and OTP serving customers in the vicinity of the Plant, OTAE sought proposals from both utilities regarding electricity service.^[18] Each utility delivered its proposal in presentations on February 23, 2006 to the Site Committee formed by the OTAE Board. The proposals were evaluated by Alan Haman, P.E. of Star Energy Services LLC (Star Energy), retained by OTAE to provide an analysis of the power needs of the Plant.^[19]

Proposed Service by OTP

12. OTP proposed to serve the Plant by adding a substation equipped with a 500 kVA 12.5kV-4.16 kV padmount and either three 2,000 kVA 12.5 kV – 480 volt or four 2,500 kVA padmount underground transformers. All of the padmounts will use three phase switching. A 500 MCM 12.5 kV underground circuit will serve all the transformers and circle the Plant.^[20]

13. For backup service to the Plant, OTP proposed to upgrade 1.7 miles of existing 12.5 kV line, thereby providing an alternative source of electricity from OTP's Edgetown substation to the substation to be installed adjacent to the Plant.^[21] The cost of the improvements, including the line upgrade was calculated as \$1,076,396.^[22] OTP has plans for future system improvements in the Fergus Falls area that are expected to allow continued service in the event of an outage on the GRE 115 kV line supplying electricity to the Plant.^[23]

14. OTP maintains its own 24/7 monitoring and dispatch center, operated by OTP employees in its offices in Fergus Falls. The OTP offices are located within five miles of the Plant. OTP employs twelve journeymen linemen located in Fergus Falls and has an additional 160 linemen throughout the OTP system. OTP maintains a three-person "hot line" crew in Fergus Falls. This crew is able to perform maintenance and repairs while power is still supplied to the customer.^[24]

Proposed Service by LREC

15. LREC proposed to serve the Plant by adding a 7.5/10.0 MVA capacity transformer to the existing LREC substation equipped with a 5 MVA capacity transformer, located a few hundred feet from the Plant's boundary. The existing transformer would be raised to 7 MVA capacity with the addition of cooling fans. The addition of second transformer would be to provide back-up capacity for the Plant. Both transformers would be served by the same transmission line. The cost of the substation equipment needed to provide power to the Plant from the LREC substation was estimated to be \$795,000.^[25]

16. For customer outage notification after business hours, LREC has contracted with an answering service in Perham, Minnesota. Once notified, LREC uses radio-dispatched, two-person crews to respond to outages. On-call personnel report to the LREC office at Pelican Rapids before dispatch to the outage location. The travel time from Pelican Rapids is estimated as 20 to 25 minutes. LREC requires its crews to report to the Pelican Rapids office within 30 minutes of notification of an outage, so the standard response time is 50 to 55 minutes.^[26]

Assessment of Competing Proposals

17. On March 7, 2006, Star Energy provided its assessment of the OTP and LREC proposals in a report, Fergus Falls Ethanol Plant Electric Utility Analysis ("Star Energy Analysis").^[27] The Star Energy Analysis included a comparison of both utilities' proposals on a five point scale, assessing various quality aspects and pricing considerations. Of the twelve items compared, the two utilities' proposals were scored as equal on six items, LREC higher on five items (two of which were pricing), and OTP higher on one item. Star Energy suggested that the firm pricing option not be adopted.^[28] Except for three summer months, LREC's proposed pricing was lower than that proposed by OTP. The annual electrical billing from LREC was estimated at \$2,382,291 and from OTP, \$2,429,916.^[29] Overall, LREC scored somewhat higher than OTP on the comparison.^[30]

18. Star Energy indicated that information was not provided that affected the comparison of the two proposals. Approximately half of the comparison points needed additional information.^[31] Star Energy expected that the final decision would be made by OTAE after additional information was received from the utilities.^[32] Requests for supplementary information were made to both utilities.^[33] OTP provided additional information regarding substation monitoring, the quality of plant voltage monitoring, and backup of the primary substation.^[34]

19. OTP noted that its proposal was based on a 10 MVA rated substation transformer without cooling fans, rated at 14 MVA with the cooling fans to be installed. The requested monitoring and control equipment for the substation to serve the Plant was added to the proposal. OTP clarified that voltage monitoring equipment would be installed on each of the three phases of each circuit. Two distribution circuits, each large enough to handle the entire load of the Plant, would be installed in a loop

configuration. With the switches to be installed at each distribution transformer, this configuration would allow the operator to bypass a problem on either circuit to keep the Plant operating. OTP maintained that this configuration rendered a third circuit unnecessary to serve the Plant.^[35]

20. The Site Committee of OTAE recommended that the OTP proposal be accepted. On March 10, 2006, the OTAE Board of Governors voted to accept the OTP proposal conditioned on OTP's making changes to its proposal to make it more similar to LREC's proposal, except for firm rates.^[36] The acceptance acknowledged that OTP's rates may change based on a filing with the Commission anticipated to be made in 2007.^[37] The OTP employee who was a member of the OTAE Board did not attend the proposal meeting and abstained from voting on all issues relating to electrical service to the Plant.^[38] A number of Board members are LREC customers. No Board member abstained on the basis of being a LREC customer. The vote was unanimous, with one abstention. The electric service agreement with OTP was signed on April 7, 2006.^[39]

21. In response to further inquiries, regarding its decision, OTAE informed LREC of points of discussion that preceded the OTAE Board's choice of OTP. These discussion points included: proximity of OTP to the Plant, thereby reducing response time for repairs and outages; OTP having regulated rates, thereby reducing rate volatility; the current difference in rates being insignificant; OTP having higher levels of energy efficiency incentives and rebates; OTP's available technical expertise; LREC's history of service outages affecting Board members who are LREC customers; the absence of such outages affecting Board members who are OTP customers; recent press reports regarding LREC's equity situation and potential instability; OTP's size and experience serving other ethanol plants; LREC's relative inexperience with ethanol plant service, compared to OTP's; and OTP's ability to provide alternate service for an off-site substation.^[40]

22. Star Energy noted that the OTAE Board's decision to accept the OTP proposal was reasonable.^[41]

Application of the Large Load Exception

23. Electric customers are usually served by the utility that is assigned to the service area in which the customer is located. To be served by a different utility, the customer would have to be located in an area which was reassigned by the Commission to a neighboring utility.^[42] For large electric consumers, Minn. Stat. § 216B.42, subd. 1 establishes an exception, known as the "large load exception." Customers meeting the initial qualifications of: 1) being located outside of a municipality, and 2) requiring electric service with a connected load of 2,000 kilowatts or more, are not limited to the service area restriction. Beyond these initial qualifications, the Commission must consider six factors, enumerated below.

24. The parties agreed that OTAE will require approximately 6.5 MW of load for operation of the Plant.^[43] The Plant is situated entirely outside of any municipal

boundary. OTAE meets the initial qualifications for application of the large load exception.

Electric Service Requirements

25. The first statutory factor to be assessed in determining whether the Commission should grant the large load exception is “the electric service requirements of the load to be served.”^[44] LREC and OTP have stipulated that neither party has an advantage over the other in regards to the electric service requirement factor.^[45] The record supports the parties’ stipulation.

Available, Adequate Power Supply

26. The second statutory factor to be assessed in whether OTP or LREC has an available, adequate power supply.^[46] LREC and OTP have stipulated that neither party has an advantage over the other in regards to available, adequate power supply factor.^[47] The record supports the parties’ stipulation.

Development or Improvement of Electric System

27. The third statutory factor requires that the Commission assess whether choosing a particular utility will result in the development or improvement of the electric system of the utility seeking to provide the electric service. The Commission must consider economic factors when making this assessment.^[48]

28. OTP operates two substations in the Fergus Falls area (Hoot Lake substation and Edgetown substation), each with a capacity of 37 MVA. OTP maintains that the growth in the Fergus Falls area load (not including any demand added by the Plant) has risen to almost 37 MVA. This increase in load is cited by OTP as creating an immediate need for an increase in substation capacity.^[49]

29. To address the increase in substation capacity, OTP’s engineers proposed to add a 14 MVA transformer, supplied by upgrading an existing 12.5 kV line. OTP maintains that this transformer, located near the Plant site, will provide an assurance of service continuity to OTAE as a back-up supply to the Plant. This addition is also expected to provide an additional 7.5 MVA of substation capacity that may be used throughout the Fergus Falls area.^[50]

30. OTP also maintained that the proposed additions in capacity would result in economic benefits to ratepayers. These benefits include deferring the cost of a new substation in the Fergus Falls area for three to five years, at an estimated economic value of \$210,000 per year of deferral. OTP maintains that the avoided costs are equivalent to the costs that will be incurred to provide service to the Plant.^[51]

31. LREC did not perform an economic benefit analysis to account for the impact of serving the Plant.^[52] LREC has not identified any costs that will be deferred or avoided by installing the equipment necessary to serve the Plant. LREC disputed OTP’s assessment of benefits to the overall system derived from excess capacity in the

Otter Tail Area substation to be constructed.^[53] LREC did not provide expert analysis on this point, but merely relied on the rated capacities of the Edgetown and Hoot Lake substations in asserting that the excess capacity would be insufficient to serve the entire Fergus Falls area in the event that transmission to the Edgetown substation is interrupted.^[54]

32. OTP's assessment of the service being provided to the Fergus Falls area demonstrates that additional substation capacity is needed. OTP has shown that adding the Otter Tail area substation will allow OTP to address a portion of that current need in an economically efficient manner. Installation of a substation in the Otter Tail area will allow OTP to defer a needed addition to its electrical distribution system for a period of years, resulting in an economic benefit to its customers and shareholders as well as an improvement to the electricity distribution system.

33. LREC estimates that the electricity purchased by the Plant will represent a 15% increase over the utility's current sales. This amount equates to adding 4,354 new customers (presumably residential customers with average demand), to LREC's system. LREC's current load factor is 52% on a non-coincident peak basis and 68% on a coincident peak basis. Serving the Plant will increase each of these load factors by approximately 4%. LREC maintains that these increases and the increased sales will be significant benefits to LREC's member-customers. LREC estimates that its margins will increase by 7.6% if it is serving the Plant and that its member-customers share in the margins.^[55]

34. OTP noted that its load factor would be improved in a similar fashion as LREC's load factor. The only difference would be lower benefit per customer on the OTP system, since OTP has more customers than LREC.^[56]

35. OTP maintained that a negative economic impact could arise from LREC's proposal for a fixed-rate contract to supply power to the Plant. LREC does not have a fixed-rate supply contract for the electricity that it must purchase in order to provide electricity for OTAE's Plant. Should LREC's cost of electricity increase, existing members of the Cooperative would bear a larger share of the cost to supply electricity to the Plant.^[57]

36. OTP estimated its costs to provide service to the Plant as \$1,076,396. OTP Brief, at 9; Ex. 19. LREC disputed OTP's estimate of the costs that LREC would incur to serve the Plant in the manner OTAE would find acceptable. The ALJ has accepted LREC's figure of \$836,500 as reflecting the true cost of LREC providing electricity to the Plant. But this disparity does not change the overall economic impact of the installation of substation capacity to serve the Plant. OTP will derive an economic benefit that offsets the installation costs.^[58] LREC does not avoid or defer any of its present or future costs by installing the equipment that it would require to serve the Plant.

Proximity of Adequate Facilities

37. The fourth statutory factor requires that the Commission consider the proximity of adequate facilities from which electric service of the type required may be delivered.^[59]

38. To provide power to the Plant, OTP will rely on GRE's existing 115 kV line to supply the new substation to be built near the Plant site. This substation will be equipped with a 500 kVA 12.5kV-4.16 kV padmount and either three 2,000 kVA 12.5 kV – 480 volt or four 2,500 kVA padmount underground transformers. All of the padmounts will use three phase switching. A 500 MCM 12.5 kV underground circuit will serve all the transformers and circle the Plant.^[60]

39. OTP's planned configuration affords back-up service through the upgrade of 1.7 miles of existing 12.5 kV distribution line. The upgraded line will provide back-up service to the Plant from OTP's Edgetown substation. OTP estimates the entire facility cost as \$1,076,396.^[61]

40. LREC has an existing substation adjacent to the Plant. Serving the Plant would require LREC to add an additional transformer, circuit switcher, extend access to the nearby 115 kV transmission line, and install underground distribution lines at a cost of \$836,500 for the entire project.^[62]

41. While the LREC substation is near the Plant, LREC cannot serve other loads within the Otter Tail Area. OTP's proposed facilities have the capacity to serve the Plant and additional loads that may arise in the Otter Tail Area.

Customer Preference

42. The fifth statutory factor requires that the Commission consider the preference of the customer for which utility provides electric service.^[63] OTAE considered each utility's proposal. There was significant analysis and assessment of each proposal. The unambiguous preference of the customer in this matter is for OTP to provide service to the Plant.

43. LREC argued that customer preference should be discounted as a factor in this proceeding.^[64] This argument is based on LREC's contention, advanced without supporting authority, that the customer preference factor can only apply where the customer's decision is "informed, impartial, and objective."^[65] OTAE solicited proposals from competing utilities, assessed those proposals with an independent expert, Alan Haman of Star Energy, and followed up the proposals in some of the areas that Haman identified. Contrary to LREC's contention that no follow-up was made regarding its proposal, the OTAE Site Committee made at least one inquiry before making a recommendation to the full OTAE Board.^[66] There is no obligation on a customer to pursue additional information regarding proposals before expressing a preference and having that preference considered by the Commission.

44. LREC has been informed of the reasons for OTAE's decision.^[67] LREC has had the opportunity in this proceeding to demonstrate that OTAE's decision was incorrect or unsupported. The record in this proceeding supports the OTAE Board's choice of electricity provider. There is no reason to disregard the customer preference factor in this proceeding.

Other Pertinent Factors

45. The sixth statutory factor requires that the Commission consider "any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements."^[68]

46. OTP noted five factors it considered significant differences between the two proposals. First, the location of OTP's substation to the northwest of the plant is expected to improve reliability by placing the electrical equipment upwind of the airborne contaminants to be discharged by the plant and provide for easier future expansion of the plant. Second, including a 10/14 MV transformer is expected to allow for future expansion in the plant's capacity. Third, using a looped distribution system located underground allows for construction and maintenance of the plant without disruption of the distribution facilities. Fourth, OTP's geographic separation of primary and backup service to the plant is expected to improve reliability of service. Fifth, upgrading the backup distribution line allows for service even in the event of a failure on the GRE line providing the primary electricity supply.^[69]

47. Some of the factors identified by OTP have been matched by LREC's adjustment of its proposal for electricity service to the Plant. The expansion capacity and looped underground distribution will be provided by either utility. However, the upwind location and geographic separation of primary and back-up service are factors that are likely to enhance reliability, which was a significant concern of OTAE. These factors are pertinent and they favor OTP.

48. LREC objected to the consideration of the back-up distribution line as a factor. Such a change requires upgrading the electrical transmission systems of OTP to supply the Edgewater substation from a separate line from the existing GRE 115 kV line. This proposal was criticized by LREC as being an unsupported general planning statement that should be disregarded as lacking evidentiary support.^[70] While LREC is correct that OTP has not established a schedule for the transmission system upgrade, the need for system reliability is an important concern for any utility. Due to the configuration of its substations, OTP has the capacity for providing this significant increase in reliability at some point in the future. LREC does not have a similar capacity to draw on electricity from different transmission sources.

49. Reliability of electrical service was identified by OTAE as being of the utmost importance to the ongoing operation of the Plant. An electrical outage of more than one hour can interrupt the ethanol fermentation process, causing significant cost increases to OTAE. Even brief outages increase the risk of fire, both from loss of cooling and unavailability of the fire control equipment. OTAE concluded that the size,

location, and availability of repair crews would result in shorter outage periods in the case of interruptions if service was being provided by OTP, rather than LREC. OTAE also considered OTP's greater experience at providing electrical service to industrial customers of similar size to the Plant as a measure of reliability.^[71]

50. LREC's proposal put the primary and back-up transformers adjacent to each other and each is supplied by the same transmission line. OTP maintains that this lack of geographic separation renders catastrophic failure of both transformers more likely.^[72] The geographic separation of primary and back-up transformers favors OTP.

51. OTP maintained that LREC's back-up transformer would be too small to supply the full load required to operate the Plant.^[73] LREC would serve the plant with a new transformer and convert the existing transformer to provide a back-up. The back-up transformer would be adequate (with the addition of cooling fans to increase the rated capacity) to supply the Plant.^[74]

52. LREC's engineering and support for service to the Plant is anticipated to come from GRE staff, located in Elk River.^[75] The nearest GRE repair crews originate from Wadena, Minnesota.^[76] LREC noted that radio-dispatched, two-person crews are used to respond to outages. For LREC crews, on-call personnel report to the LREC office at Pelican Rapids before dispatch to the outage location. The travel time from Pelican Rapids is estimated as 20 to 25 minutes. LREC requires its crews to report to the Pelican Rapids office within 30 minutes of notification of an outage.^[77]

53. LREC noted that its ranking in GRE's Transmission Reliability Report is the best of five companies measured, while OTP ranks last in that group. LREC maintained that this history was indicative of LREC's ability to provide a reliable source of power to the Plant. LREC also cited its own residential customer satisfaction survey results showing an above average rating as additional evidence of reliability.^[78]

54. Industrial customers comprise approximately 25% of OTP's system. OTP estimates that its twenty largest customers have loads ranging from 2,500 kw to over 50,000 kw. A number of OTP industrial customers have 24 hour/7 day per week (24/7) operations. Three ethanol plants are among OTP's industrial customers. OTP first began serving ethanol plants over twenty years ago, and gained experience in assisting those customers over that time.^[79]

Pricing Comparison

55. LREC maintained that the cost of electricity to OTAE would be significantly lower under LREC's proposal. OTP disputed that contention, noting that LREC's price calculation included discounts for months in which the Plant's load factor was greater than 90%. In OTP's experience serving ethanol plants, the load factor is less than 90% for several months out of the year. With adjustments made for the loss of that discount, OTP maintained that the electrical billings from LREC and OTP for serving the Plant would be "virtually identical."^[80]

56. Another consideration is the stability of pricing. LREC offered a five-year rate, regardless of changes in the wholesale cost of electricity.^[81] OTP maintained that such an offer could result in subsidies from existing customers to OTAE.^[82] LREC is not rate-regulated, meaning that it can change its rates without applying to the Commission for approval. OTP is rate-regulated and it has not applied for a rate adjustment in many years. LREC increased its rates in 2004 and 2006.^[83] OTP noted that it may apply for a rate increase, but any such increase must be approved by the Commission.^[84] OTAE accepted the OTP proposal while explicitly acknowledging that OTP may be filing for a rate adjustment in 2007.

57. As part of OTP's proposal, energy efficiency incentives and rebates were offered.^[85] These incentives and rebates, which help close the gap in prices between OTP and LREC, render the difference in pricing even less important in the OTAE decision-making process.

Prior Commission Decision

58. Both utilities cited the prior Commission decision in *Cold Spring Granite Company*.^[86] In *Cold Spring*, the Commission applied a balance of the factors test to determine that the provider with the better availability of maintenance personnel and equipment should be awarded service in line with the preference of the customer. This award was granted despite the competing utility's offering service at a lower rate.

59. The Commission expressly considered a finding made by the ALJ in *Cold Spring*, that the customer preference was relatively uninformed and motivated by bias in favor of the preferred utility. The Commission concluded that the customer concerns of quality of service and long-term rates are reasonable business considerations.^[87]

60. LREC advanced the same arguments that the Commission rejected in *Cold Spring*. There is ample evidence that the OTAE Board emphasized reliability and responsiveness over other factors in making its business decision regarding a supplier of electricity. The uncertain nature of future electricity costs is also a factor that OTAE determined in favor of OTP. The PUC decision in *Cold Spring* does not change any aspect of the selection process in this proceeding.

Based on the Findings of Fact, the Administrative Law judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Public Utilities Commission have jurisdiction over the subject matter of this proceeding pursuant to Minn. Stat. § 14.50 and Minn. Stat. Ch. 216B.

2. Any of the foregoing Findings of Fact containing material that should be treated as a Conclusion is hereby adopted as a Conclusion.

3. OTAE and the load to be served at the Plant meet the thresholds for application of Minn. Stat. § 216B.42. OTAE is entitled by the terms of that statute to choose its electricity supplier under the large load exemption.

4. Both OTP and LREC meet the electric service requirements of the OTAE load to be served.

5. Both OTP and LREC have an available, adequate power supply to meet the demand added by the OTAE load.

6. Choosing OTP to provide service to OTAE will result in the development and improvement of OTP's electric system, including economic factors relating to providing that service. Choosing LREC will result in an economic benefit to LREC, its customers, and its members, but will not result in development of or improvement to LREC's electric system.

7. LREC has some facilities in the vicinity of the OTAE load to be served. LREC would require significant upgrade of its facilities to render the service adequate for serving OTAE's demand. OTP does not have adequate facilities in the vicinity of the OTAE load, but installation of the necessary facilities is no more burdensome than the upgrade required of LREC's facilities. OTP's adding adequate facilities in the area does not result in an unnecessary duplication of services.

8. OTAE's declared preference is for OTP to provide the electric service to the load to be served. This preference is supported by legitimate business reasons and was expressed after considering fully the proposals of both utilities.

9. There are pertinent factors, particularly concerning reliability, affecting the ability of each utility to serve the OTAE load. On the whole, these factors support OTAE's choice of OTP as the utility to serve the load at issue in this matter.

Based on the Findings of Fact and Conclusions, the Administrative Law Judge RECOMMENDS that the Public Utilities Commission issue the following:

ORDER

The Petition of Otter Tail Corporation d/b/a Otter Tail Power Company to Service Otter Tail Ag Enterprises by providing electricity to the ethanol plant to be constructed near Fergus Falls, Minnesota is GRANTED.

Dated this 21st day of December, 2006.

_____/s/ Richard C. Luis_____
RICHARD C. LUIS
Administrative Law Judge

Reported: Janet Shaddix Elling, R.P.R.
Shaddix & Associates
Two Volumes

MEMORANDUM

The issues in this proceeding have been clearly presented by the parties. OTAE will be operating an ethanol plant that qualifies for the large load exception. Both utilities have the capacity to provide service to the Plant and the governing statute requires that the Commission consider a number of factors before affording an exemption from the usual approach, which is to have the service provided by the utility in whose service territory the customer is located.

While not participating as a party in this proceeding, OTAE has made clear its preference for service from OTP. With the Plant expected to operate on a 24/7 basis for 360 days out of the year, OTAE emphasized reliability in its decision. This emphasis was manifested in equipment options, experience with similar loads, availability of personnel, availability of maintenance without interrupting service, and long-term availability of electricity from different transmission sources. The significant loss of gross revenue that cannot be made up by increased production makes reliability a very important concern of the customer.

LREC maintained that OTAE was not serious in its selection process because OTAE did not produce a clear statement of system requirements for each utility to meet in proving proposals. It is noted that the Commission has not imposed a specific decision-making process on customers seeking to obtain the benefit of the large load exemption. OTP's experience in providing electricity to ethanol plants rendered such a statement of system requirements unnecessary for OTP to provide a bid. OTAE can legitimately rely on the apparent expertise of a utility as a part of the decision-making process. OTP has the capacity to address concerns of OTAE without outside assistance. These considerations, combined with the experiences of the individual OTAE Board members in receiving service from each utility, led to a conclusion by the OTAE Board that the Plant would be served better by OTP.^[88] There is nothing in the record of this proceeding that contradicts that conclusion.

The Commission's decision to grant or deny the large load exemption is conditioned on consideration of a number of factors. The balance of those factors in this proceeding favors granting OTP's Petition to serve OTAE's load.

R.C.L.

^[1] OTP Ex. 5, Mueller Direct, Exhibit 2.

^[2] *ITMO the Petition of Otter Tail Corporation d/b/a Otter Tail Power Company to Serve Otter Tail Ag Enterprises*, Notice and Order for Hearing, PUC Docket No. E-119, 017/SA-06-665 (issued June 9, 2006) (hereinafter “*OTP Application*”)

(<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=3133093>).

^[3] OTP Ex. 7, Rogelstad Direct, at 4.

^[4] OTP Ex. 5, Mueller Direct, Exhibit 1.

^[5] OTP Ex. 5, Mueller Direct, Exhibit 1.

^[6] LREC Ex. 13, Haman Direct, Attachment 1, Section 5, at 19.

^[7] OTP Ex. 1, Larson Direct, at 3; LREC Ex. 9, Weakland Direct, Attachment 1.

^[8] OTP Ex. 1, Larson Direct, at 3.

^[9] OTP Ex. 1, Larson Direct, at 2.

^[10] Joint Ex. 15.

^[11] LREC Ex. 11, Jenson Direct, at 2.

^[12] OTP Ex. 3, Aasgaard Direct, at 6-7.

^[13] OTP Ex. 3, Aasgaard Direct, at 6.

^[14] OTP Ex. 5, Mueller Direct, Exhibit 2 (Attachment 1).

^[15] OTP Ex. 5, Mueller Direct, Exhibit 2 (Attachment 2).

^[16] LREC Ex. 11, Jenson Direct, at 5

^[17] LREC Ex. 9, Weakland Direct, at 3.

^[18] OTP Ex. 1, Larson Direct, at 3.

^[19] LREC Ex. 13, Haman Direct, at 1-2.

^[20] OTP Ex. 5, Mueller Direct, at 4; OTP Ex. 19.

^[21] OTP Ex. 5, Mueller Direct, at 4.

^[22] OTP, Ex. 19.

^[23] OTP Ex. 4, Aasgaard Rebuttal, at 6.

^[24] OTP Ex. 7, Rogelstad Direct, at 9-10.

^[25] Hearing Transcript, Vol. 2, at 178 (Jensen).

^[26] LREC Ex. 10, Weakland Rebuttal, at 3; OTP Exs. 24 and 25.

^[27] LREC Ex. 13, Haman Direct, at 2 and Attachment 1.

^[28] LREC Ex. 13, Haman Direct, Attachment 1, Executive Summary at 6-7.

^[29] LREC Ex. 13, Haman Direct, Attachment 1, Executive Summary at 6-7.

^[30] LREC Ex. 13, Haman Direct, Attachment 1, 3-1.

^[31] LREC Ex. 13, Haman Direct, Attachment 1, Executive Summary at 8.

^[32] OTP Ex. 14, Haman Rebuttal, at 6-7.

^[33] OTP Ex. 1, Larson Direct, at 4.

^[34] OTP Ex. 5, Aasgaard Direct, at 8-9.

^[35] OTP Ex. 6, Aasgaard Rebuttal, at 1-2.

^[36] OTP Ex. 1, Larson Direct, at 5 and Attachment 1; OTP Ex. 6, Aasgaard Rebuttal, at 1-2.

^[37] OTP Ex. 1, Larson Direct, Attachment 1.

^[38] OTP Ex. 6, Aasgaard Rebuttal, at 5.

^[39] OTP Ex. 1, Larson Direct, at 5 and Attachment 3.

^[40] OTP Ex. 1, Larson Direct, Attachment 5.

^[41] Hearing Transcript, Vol. 2, at 262-264 (Haman).

^[42] Minn. Stat. §§ 216B.39-.40.

^[43] Joint Ex. 15.

^[44] Minn. Stat. § 216B.42, subd. 1(1).

^[45] LREC Brief, at 4.

^[46] Minn. Stat. § 216B.42, subd. 1(2).

^[47] Joint Ex. 15; LREC Brief, at 4.

^[48] Minn. Stat. § 216B.42, subd. 1(3).

^[49] OTP Brief at 6.

^[50] OTP Brief, at 7, OTP Ex. 7, Rogelstad Direct, 5-6.

^[51] OTP Ex. 7, Rogelstad Direct, at 7; OTP Ex. 8, Rogelstad Rebuttal, at 7-8.

^[52] OTP Ex. 32.

^[53] LREC Brief, at 6-7.

^[54] LREC Brief, at 7-8.

[55] LREC Ex. 10, Weaklend Rebuttal, at 2-3.
[56] OTP Brief, at 7-8 (citing Hearing Transcript, Vol. 2, at 147-148 (Weaklend)).
[57] OTP Brief, at 7-8 (citing OTP Exs. 27 and 31).
[58] See Finding 32, above.
[59] Minn. Stat. § 216B.42, subd. 1(4).
[60] OTP Ex. 5, Mueller Direct, at 4; OTP Ex. 19.
[61] OTP Ex. 19.
[62] LREC Ex. 33.
[63] Minn. Stat. § 216B.42, subd. 1(5).
[64] LREC Brief, at 13-17.
[65] LREC Brief, at 14.
[66] Hearing Transcript, Vol. 1, at 63; see also OTP Ex. 1, Larson Direct, at 4.
[67] See Finding 21, above.
[68] Minn. Stat. § 216B.42, subd. 1(6).
[69] OTP Ex. 5, Mueller Direct, at 5 and Attachment 1; OTP Ex. 6, Mueller Rebuttal, at 4-5; OTP Ex. 14, Haman Rebuttal, 2; OTP Ex. 4, Aasgaard Rebuttal, at 6; OTP Ex. 7, Rogelstad Direct, at 8-9.
[70] LREC Brief, at 12-13.
[71] OTP Ex. 1, Larson Direct, at 7.
[72] OTP Ex. 4, Aasgaard Rebuttal, at 6.
[73] OTP Ex. 4, Aasgaard Rebuttal, at 6.
[74] LREC Brief, at 9-10.
[75] Hearing Transcript, Vol. 2, at 151-152 (Weaklend).
[76] OTP Ex. 24, at 31. Wadena, Minnesota is located farther from the Plant than is Pelican Rapids.
[77] LREC Ex. 10, Weaklend Rebuttal, at 3; OTP Exs. 24 and 25.
[78] LREC Ex. 9, Weaklend Direct, at 5-6.
[79] OTP Ex. 5, Aasgaard Direct, at 3-4 and 7.
[80] OTP Ex. 4, Aasgaard Rebuttal, at 3.
[81] LREC Ex. 13, Haman Direct, Attachment 1, Section 5, at 20-21.
[82] OTP Brief, at 8.
[83] Hearing Transcript, Vol. 2, at 150-151 (Weaklend).
[84] LREC Ex. 13, Haman Direct, Attachment 1, Section 3, page 3-9.
[85] OTP Ex. 5, Aasgaard Direct, at 8 and Attachment 1.
[86] *ITMO the Petition of Cold Spring Granite Company for a Service Extension from Northern States Power Company*, PUC Docket No. E-002/SA-85-84 (PUC Order issued July 25, 1985) ("*Cold Spring*").
[87] *Cold Spring*, at 5.
[88] That preference was reiterated in a letter from the OTAE Board emphasizing the utilities' service histories and OTP's experience with large customers as the reasons for the Board's selection of OTP as the preferred electricity supplier. OTP Ex. 2, Larson Rebuttal, Attachment 1.